

PLEA AGREEMENT ROUTING SLIP

revised February 22, 2003

From: David T. Maguire, AUSA Date: March 28, 2003

To: Stephen W. Miller, MAUSA

Case: U.S. v. Edmund A. Matricardi, III USAO No. 2002R

Date Plea Scheduled: _____

1. Please Check Whether this is a Pre- or Post- Indictment Agreement

_____ ☐ Pre-Indictment Plea
_____ ☒ Post-Indictment Plea

2. Optional Sentences or Paragraphs Were Deleted:

<input checked="" type="checkbox"/> Detention Language	<input type="checkbox"/> Substantial Assistance Paragraph
<input checked="" type="checkbox"/> Forfeiture Paragraphs	<input checked="" type="checkbox"/> Immigration Deportation
<input checked="" type="checkbox"/> Advice of Rights Paragraph	<input checked="" type="checkbox"/> Tax Language Paragraphs
<input type="checkbox"/> Cooperation Paragraphs	<input checked="" type="checkbox"/> No Other Conditions Paragraph

3. Modifications Were Made to the Following Paragraphs:

Please note page and paragraph number of final document.

<u>Page No.</u>	<u>Paragraph No.</u>		
_____	_____	_____	_____
_____	_____	_____	_____

4. Is Restitution Applicable:

☐ Yes ☒ No

If yes, are victims fully and correctly identified and the amount due each stated:

☐ Yes ☐ No

5. Is Forfeiture Applicable:

☒ No

☐ If yes, did you inquire of agency if there are any seized assets that should be included for criminal forfeiture?

☐ Did you prepare a consent order of forfeiture as part of the plea package?

6. The Following Paragraphs Were Added:

Please note page and paragraph number of final document

<u>Page No.</u>	<u>Paragraph No.</u>		
_____	_____	_____	_____

6. APPROVAL

Approved: _____ Date: _____

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA

Richmond Division

UNITED STATES OF AMERICA)	
)	
v.)	CRIMINAL NO. 3:03CR16
)	
EDMUND A. MATRICARDI, III,)	
)	
Defendant.)	

PLEA AGREEMENT

Paul J. McNulty, United States Attorney for the Eastern District of Virginia, David T. Maguire, Assistant United States Attorney, Stephen W. Miller, Managing Assistant United States Attorney, the defendant, EDMUND A. MATRICARDI, III, and the defendant's counsel, Steven D. Benjamin, Esq., pursuant to Rule 11(c) of the Federal Rules of Criminal Procedure, have entered into an agreement, the terms and conditions of which are as follows:

1. The defendant, EDMUND A. MATRICARDI, III, agrees to enter a plea of guilty to Count One of the pending indictment. Count One charges the defendant with Interception of a Wire Communication, in violation of Title 18, United States Code, Section 2511(1)(a). The maximum penalty for this offense is a maximum term of five years of imprisonment, a fine of \$250,000.00, a special assessment, and three years of supervised release. The defendant is aware that this supervised

release term is in addition to any prison term the defendant may receive, and that a violation of a term of supervised release could result in the defendant being returned to prison for the full term of supervised release.

2. Before sentencing in this case, the defendant agrees to pay a mandatory special assessment of one hundred dollars (\$100.00) per count of conviction.

3. Restitution does not appear to be applicable in this case.

4. The defendant is aware that the defendant's sentence will be imposed in accordance with the Sentencing Guidelines and Policy Statements. The defendant is aware that the Court has jurisdiction and authority to impose any sentence within the statutory maximum set for the offense(s) to which the defendant pleads guilty. The defendant is aware that the Court has not yet determined a sentence. The defendant is also aware that any estimate of the probable sentencing range under the sentencing guidelines that the defendant may have received from the defendant's counsel, the United States, or the probation office, is a prediction, not a promise, and is not binding on the United States, the probation office, or the Court. The United States makes no promise or representation concerning what sentence the defendant will receive, and the defendant cannot withdraw a guilty plea based upon the actual sentence. However, it is agreed that the defendant's guideline calculation will be as follows: base offense level of nine (9), pursuant to Section 2H3.1(a),

reduced by two (2) levels for acceptance of responsibility, pursuant to Section 3E1.1(a), producing an offense level of seven (7) and a guideline range of zero (0) to six (6) months. It is further agreed that the United States will recommend that the defendant not be sentenced to any imprisonment, but instead, that the defendant be placed on probation for three (3) years and pay a fine of \$10,000.00. The defendant is aware that Title 18, United States Code, Section 3742 affords a defendant the right to appeal the sentence imposed. Acknowledging all this, the defendant knowingly waives the right to appeal any sentence within the maximum provided in the statute(s) of conviction (or the manner in which that sentence was determined) on the grounds set forth in Title 18, United States Code, Section 3742 or on any ground whatever, in exchange for the concessions made by the United States in this plea agreement. This agreement does not affect the rights or obligations of the United States as set forth in Title 18, United States Code, Section 3742(b).

5. The defendant, pursuant to Rule 11(a)(2), reserves his right to appeal the district court's denial of his pretrial motions to dismiss the indictment.

6. The United States will not further criminally prosecute defendant in the Eastern District of Virginia for the specific conduct described in the indictment or statement of facts, except for crimes of violence. Therefore, defendant does not have immunity for crimes related to, but not specifically set out in the indictment, or

statement of facts. Except where specifically noted, this plea agreement binds only the United States Attorney's Office for the Eastern District of Virginia and the defendant; it does not bind any other prosecutor in any other jurisdiction.

7. The defendant represents to the Court that defendant is satisfied that defendant's attorney has rendered effective assistance.

8. The defendant agrees to cooperate fully and truthfully with the United States, and provide all information known to the defendant regarding any criminal activity. In that regard:

a. The defendant agrees to testify truthfully and completely at any grand juries, trials or other proceedings.

b. The defendant agrees to be reasonably available for debriefing and pre-trial conferences as the United States may require.

c. The defendant agrees to provide all documents, records, writings, or materials of any kind in the defendant's possession or under the defendant's care, custody, or control relating directly or indirectly to all areas of inquiry and investigation.

d. The defendant agrees that, upon request by the United States, the defendant will voluntarily submit to polygraph examinations to be conducted by a polygraph examiner of the United States' choice. The defendant stipulates to the

admissibility of the results of this polygraph examination if later offered in a proceeding to determine the defendant's compliance with this plea agreement.

e. The defendant agrees that the accompanying Statement of Facts is limited to information to support the plea. The defendant will provide more detailed facts relating to this case during ensuing debriefings.

f. The defendant is hereby on notice that the defendant may not violate any federal, state, or local criminal law while cooperating with the government, and that the government will, in its discretion, consider any such violation in evaluating whether a downward departure is appropriate.

g. Nothing in this agreement places any obligation on the government to seek the defendant's cooperation or assistance.

9. a. The United States agrees not to use any truthful information provided pursuant to this agreement against the defendant in any other criminal prosecution against the defendant in the Eastern District of Virginia. Pursuant to Section 1B1.8 of the Sentencing Guidelines, no truthful information that the defendant provides pursuant to this agreement will be used to enhance the defendant's guidelines range. The United States will bring this plea agreement and the full extent of the defendant's cooperation to the attention of other prosecuting offices if requested.

b. Nothing in this plea agreement restricts the Court's or Probation Office's access to information and records in the possession of the United States. Further, nothing in this agreement prevents the government in any way from prosecuting the defendant should the defendant provide false, untruthful, or perjurious information or testimony. Moreover, nothing in this agreement prevents the government from using such information in furtherance of any forfeiture action, whether criminal or civil, administrative or judicial.

10. The parties agree that the United States reserves its option to seek any departure from the applicable sentencing guidelines, pursuant to Section 5K of the Sentencing Guidelines and Policy Statements, or Rule 35(b) of the Federal Rules of Criminal Procedure, if in its sole discretion, the United States determines that such a departure is appropriate. The parties agree that in cases where the United States does file such a motion, the United States reserves its option to file a further motion under 18 U.S.C. § 3553(e) to permit a departure under any applicable mandatory minimum sentence, if in its sole discretion the United States determines that such a further motion is appropriate.

11. The accompanying Statement of Facts signed by the defendant is hereby incorporated into this plea agreement. Defendant adopts the Statement of Facts and agrees that the facts therein are accurate in every respect and that had the matter

proceeded to trial, the United States would have proved those facts beyond a reasonable doubt.

12. If the defendant fails in any way to fulfill completely all of the obligations under this plea agreement, the United States may seek release from any or all its obligations under this plea agreement.

13. If the defendant fails to fulfill the obligations under this plea agreement, the defendant shall assert no claim under the United States Constitution, any statute, Rule 410 of the Federal Rules of Evidence, Rule 11(f) of the Federal Rules of Criminal Procedure, or any other federal rule, that defendant's statements pursuant to this agreement or any leads derived therefrom, should be suppressed or are inadmissible.

14. Any alleged breach of this agreement by either party shall be determined by the Court in an appropriate proceeding at which the defendant's disclosures and documentary evidence shall be admissible and at which the moving party shall be required to establish a breach of the plea agreement by a preponderance of the evidence. The proceeding established by this paragraph does not apply, however, to the United States' decision whether to file a motion based on "substantial assistance" as that phrase is used in Rule 35(b) of the Federal Rules of Criminal Procedure and Section 5K1.1 of the Sentencing Guidelines and Policy Statements. The defendant

agrees that the decision whether to file such a motion rests in the United States' sole discretion.

15. The defendant hereby waives all rights, whether asserted directly or by a representative, to request or receive from any department or agency of the United States any records pertaining to the investigation or prosecution of this case, including without limitation any records that may be sought under the Freedom of Information Act, 5 U.S.C. § 552, or the Privacy Act, 5 U.S.C. § 552a.

16. This written agreement constitutes the complete plea agreement between the United States, the defendant, and the defendant's counsel. The United States has made no promises or representations except as set forth in writing in this plea agreement. The defendant acknowledges that no threats have been made against the defendant and that the defendant is pleading guilty freely and voluntarily because the defendant is guilty. Any modification of this plea agreement shall be valid only as set forth in writing in a supplemental or revised plea agreement signed by all parties.

17. Defendant's Signature: I hereby agree that I have consulted with my attorney and fully understand all rights with respect to the pending criminal indictment. Further, I fully understand all rights with respect to the provisions of the Sentencing Guidelines and Policy Statements which may apply in my case. I have

read this plea agreement and carefully reviewed every part of it with my attorney. I understand this agreement and I voluntarily agree to it.

Date: _____

EDMUND A. MATRICARDI, III
Defendant

18. Defense Counsel Signature: I am counsel for the defendant in this case. I have fully explained to the defendant the defendant's rights with respect to the pending indictment. Further, I have reviewed the provisions of the Sentencing Guidelines and Policy Statements and I have fully explained to the defendant the provisions of those Guidelines which may apply in this case. I have carefully reviewed every part of this plea agreement with the defendant. To my knowledge, the defendant's decision to enter into this agreement is an informed and voluntary one.

Date: _____

Steven D. Benjamin, Esq.
Counsel for EDMUND A. MATRICARDI, III

Respectfully submitted,

PAUL J. McNULTY
UNITED STATES ATTORNEY

By: _____

David T. Maguire
Assistant United States Attorney

Stephen W. Miller
Managing Assistant United States Attorney